

Amendment No. 1 to HB3904

McCord
Signature of Sponsor

AMEND Senate Bill No. 3651*

House Bill No. 3904

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by deleting chapter 9 in its entirety.

SECTION 2. Tennessee Code Annotated, Title 11, is amended by adding SECTIONS 3 through 9 of this act as a new chapter.

SECTION 3. This chapter shall be known and may be cited as the "Tennessee Off-Highway Vehicle Grant Act".

SECTION 4. The number of off-highway vehicle (OHV) users in the state is increasing and is growing as a recognized recreational activity while the number of recreational sites is rapidly declining. In the absence of an OHV grant program, a number of consequences are accruing to the state, including environmental damage and loss of economic prospects. Therefore, the general assembly finds there is a need for an OHV grant program to increase economic and recreational opportunities and to protect the environment of this state.

SECTION 5. For the purpose of this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of the department of environment and conservation;

(2) "Department" means the department of environment and conservation;

(3) "Off-highway vehicle" or "OHV" means any off-road motorcycles, three-wheel or four-wheel all-terrain vehicles, four-wheel-drive motor vehicles intended by the user or owner to be used in recreational pursuits, recreational off-highway vehicles or dune buggies; and

(4) "Owner" means the person in whose name the OHV is owned.

SECTION 6. The commissioner is authorized to:

- (1) Establish and implement a statewide off-highway vehicle grant program;
- (2) Develop guidelines on the proper land selection criteria, trail design and maintenance, and best management practices for all lands used for off-highway user purposes;
- (3) Enter into partnerships, contracts, and other management agreements with state, federal, and local governments to effectuate the purposes of this chapter;
- (4) Make grants to state, federal, local governments or non-profit organizations qualified under section 501(c)(3) of the federal tax code only for trails on public property to carry out the purposes of this chapter, including, but not limited to, the purposes of acquiring a fee simple or other interest in real property, the construction of OHV trails, and the maintenance of existing OHV trails; any such grants shall be divided equally among the three grand divisions of the state, provided that if, after the department notifies local government and government agencies of the availability of such grants, there are remaining grant funds available, then the department may award additional grants to a different grand division.
- (5) In administering the process for the grants authorized in subdivision (4), the commissioner may set the requirements for applications, the criteria for awarding them, and the conditions for the receipt of the funds as deemed appropriate to protect the public interest;
- (6) Make inspections and investigations, conduct studies and research, or take such other action as may be necessary to assure recipients of grants comply with grant conditions and rules promulgated under this chapter; and
- (7) Exercise general supervision over the administration and enforcement of this chapter and all rules promulgated under this part.

SECTION 7. The commissioner is authorized to promulgate rules as necessary or appropriate to carry out the purposes of this chapter in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8.

(a) The funds received by the department under this chapter shall be used exclusively for the purpose of funding the operation, management, and enforcement of the off-highway motor vehicle grant program authorized under this chapter.

(b) Grants received by the Tennessee wildlife resources agency for OHV purposes under the Recreational Trails Program from federal funds appropriated prior to October 1, 2008 shall be retained by the agency.

(c) Each year beginning with state fiscal year 11-12, the Tennessee wildlife resources agency shall be awarded two hundred twenty-five thousand dollars (\$225,000) from the motorized trail portion of the Recreational Trails Program. Such amount shall be indexed by the percentage increase in the average consumer price index, all items-city average, as published by the United States department of labor, bureau of labor statistics however, this amount shall not exceed seventy-five percent (75%) of the funds allocated for motorized trails, except that the wildlife resources agency may apply for and be awarded motorized or multiuse trail grants in addition to this annual recurring amount.

SECTION 9.

(a) It is unlawful for any person to ride an off-highway motor vehicle upon the land of another without having first obtained the permission or approval of the owners of the land or of the person or persons in charge of the land who have authority from the owner to give such permission. A violation of this subsection (c) is a Class C misdemeanor, subject to a fine only of fifty dollars (\$50.00). Each day's violation of this subsection (a) shall be considered a separate offense; provided, that, in lieu of a fine pursuant to this subsection (a), if land is damaged, a court may order the violator to pay restitution to the landowner or to restore the property to a state comparable to its original undamaged state.

(b) The provisions of this chapter are enforceable and may be prosecuted by all law enforcement officers charged with the enforcement of the laws of this state. The primary responsibility for the enforcement and prosecution of this chapter on private

lands and on lands under local governmental ownership or control is with local law enforcement officers. The primary responsibility for the enforcement and prosecution of this chapter on public lands not under local governmental ownership or control is with state law enforcement officers. It is not the legislative intent that the department enforce trespass laws on private property.

(c) For any conviction of violation of a provision of this chapter, the court may order restitution for damages caused by the violator, or the court may order the violator to restore the property to a state comparable to its original undamaged state. Any restitution ordered shall be paid to the landowner or to the state if the land on which the offense occurred was owned, leased, licensed to, or in some manner under state control. State control includes, but is not limited to, control through any grant condition imposed in connection with the OHV grant program.

SECTION 10.

(a) The rules previously promulgated under the prior Off-Highway Vehicle Act in title 70, chapter 9 shall remain in effect until amended or repealed in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) All contracts or leases entered into prior to July 1, 2009, by the Tennessee wildlife resources agency with any entity, corporation, agency, enterprise or person other than the department pertaining to the prior Off-Highway Vehicle Act in Chapter 9 of title 70 shall continue in full force and effect as to all essential terms and conditions of the contracts in existence on July 1, 2009, to the same extent as if such contracts had originally been entered into by and between such entity, corporation, agency, enterprise or person and the department of environment and conservation, unless and until such contracts or leases are amended or modified by the parties to such contracts or leases.

SECTION 11. This act shall take effect July 1, 2010, the public welfare requiring it.